UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES NEW YORK BRANCH OFFICE

ALLAN'S BAKERY, INC.

and

Case No. 29-CA-26936

LOCAL 3, BAKERY, CONFECTIONARY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO

Tabitha Tyle, Esq., Brooklyn, NY for the General Counsel. Bruce J. Cooper, Esq. (Straci & Cooper, LLP), New York, NY, for the Union.

DECISION

Statement of the Case

STEVEN DAVIS, Administrative Law Judge: Based upon a charge filed on May 12, 2005, by Local 3, Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO (Union), a complaint was issued on June 6, 2005 against Allan's Bakery (Respondent).

The complaint alleges essentially that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification. The Respondent failed to submit an answer to the complaint. Section 102.20 of the Board's Rules and Regulations provides that the Respondent must file an answer to the complaint within 14 days of receiving the complaint, and that if it fails to do so, all the allegations of the complaint shall be deemed to be admitted to be true and shall be so found by the Board. The complaint repeated the language set forth in Section 102.20, and stated that the Respondent was required to file an answer on or before June 20, 2005. A certified mail receipt in evidence establishes that the complaint was received by the Respondent on June 8. No answer was filed by June 20, or thereafter.

On July 5, 2005, a hearing was held before me in Brooklyn, New York. At the hearing, the counsel for the General Counsel made a motion for summary judgment based on the Respondent's failure to file an answer. The Respondent made no appearance at the hearing. In view of the Respondent's failure to file an answer, I granted the motion. The parties waived the filing of post-hearing briefs.

Upon the evidence presented in this proceeding, I make the following:

Findings of Fact

I. Jurisdiction

At all material times, the Respondent, a domestic corporation having its office and place of business at 1109 Nostrand Avenue, Brooklyn, New York, has been engaged in the operation

of a retail bakery. During the past year, the Respondent derived gross revenues from its operations valued in excess of \$500,000 and purchased and received at its Brooklyn facility goods and materials valued in excess of \$5,000 directly from points located outside the State of New York.

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I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. The Alleged Unfair Labor Practices

A. The Certification

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Following an election held on March 2, 2005, the Union was certified on March 15, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

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All full-time and regular part-time production employees, including oven workers, mixers, finishers and packers, employed by the Employer at its facility located at 1109 Nostrand Avenue, Brooklyn, New York, excluding all retail employees, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

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At all times since March 2, 2005, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees in the above unit.

B. The Refusal to Bargain

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On or about April 7, 2005, April 21, 2005, and May 11, 2005, the Union, by letter, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit with respect to their rates of pay, wages, hours of employment and other terms and conditions of employment.

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Since on or about April 7, 2005, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the above unit. I find that the Respondent's refusal to bargain constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

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Conclusion of Law

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By failing and refusing on and after April 7, 2005, to bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

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Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, I shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 222, 229 (1962), *enfd*. 328 F. 2d 600 (5th Cir. 1064), *cert. denied* 379 U.S. 81 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd*. 350 F.2d 57 (10th Cir. 1965).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

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ORDER

The Respondent, Allan's Bakery, Brooklyn, New York, its officers, agents, successors, and assigns, shall

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- 1. Cease and desist from
- (a) Refusing to recognize and bargain collectively with Local 3, Bakery, Confectionary & Tobacco Workers Union, AFL-CIO, as the exclusive collective-bargaining representative of the employees in the unit described below.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
 - 2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) On request, bargain collectively with Local 3, Bakery, Confectionary & Tobacco Workers Union, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production employees, including oven workers, mixers, finishers and packers, employed by the Employer at its facility located at 1109 Nostrand Avenue, Brooklyn, New York, excluding all retail employees, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

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(b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in

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¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 7, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 19, 2005.

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		Steven Davis Administrative Law Judge
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APPENDIX NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

WE WILL NOT refuse to recognize and bargain collectively with Local 3, Bakery, Confectionary & Tobacco Workers Union, AFL-CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate collective-bargaining unit:

All full-time and regular part-time production employees, including oven workers, mixers, finishers and packers, employed by the Employer at its facility located at 1109 Nostrand Avenue, Brooklyn, New York, excluding all retail employees, clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL on request, bargain collectively with Local 3, Bakery, Confectionary & Tobacco Workers Union, AFL-CIO, as the exclusive representative of our employees and, if an understanding is reached, embody the understanding in a signed agreement:

		ALLAN'S BAKERY		
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Dated	Ву			
		(Representative)	(Title)	

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.

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